

JOINT STATEMENT OF CHIEF JUSTICE OF THE SUPREME JUDICIAL COURT
MARGARET H. MARSHALL AND CHIEF JUSTICE FOR ADMINISTRATION AND
MANAGEMENT ROBERT A. MULLIGAN

November 30, 2007

Over the last week, a judge of the Massachusetts Superior Court has come under public criticism for a bail decision, made in July 2007, to release a defendant on personal recognizance, with conditions, while he awaited trial on two criminal complaints. The judge, and our judicial system, have been criticized for not providing the public with an explanation for her bail decision.

The Massachusetts Code of Judicial Conduct, similar to such codes in other states, prohibits a judge from speaking to the press or the public, outside of court and many months later, about the reasons for a particular decision. The integrity of court proceedings and fairness to litigants require judges to "abstain," in the words of the Code, from such public interchanges. In the case of Daniel Tavares, the judge explained the reasons for her decision on the record during the July 2007 bail hearing. A transcript of that hearing was promptly made available to the press and the public.

Criticism of the decisions of judges is appropriate in a free society. Where a judge makes a decision that results in the release of a person who goes on to commit an act of violence against other human beings, the decision should be scrutinized. But in our society, which is built on the rule of law, criticism that ignores the legal principles and factual record on which the decision was based undermines our system of justice.

Under the Massachusetts bail statute and Constitution, judges are not free to deny release to a person awaiting trial for a crime based on the judge's or the public's assumption of dangerousness. To detain a defendant on grounds of dangerousness, our law requires that a separate hearing be held. The hearing must be initiated by the Commonwealth. Absent such a motion, the issue to be decided by a judge reviewing a bail petition is whether the conditions of release will not reasonably assure the appearance of the defendant before the court. The law requires a judge to impose the least restrictive conditions that she concludes will secure that objective.

In the case of Daniel Tavares, the judge undertook to apply the bail statute and the Constitution to the facts of the case presented to her. In the absence of any evidence that her decision was not in accordance with law, or based on a fair consideration of the facts presented to her, the public vilification of a conscientious and hard-working judge should have no place in our society.

A vibrant young couple, residents of Washington state, have been brutally murdered. Nothing we say can lessen that tragedy or the loss experienced by their families and friends. All members of the Massachusetts Judiciary and all thoughtful people feel profound sympathy for the young couple and their loved ones.